

**NON-DISCLOSURE AGREEMENT**  
**Between BAY AREA TOLL AUTHORITY**  
**And *(insert vendor here)*.**

***SAMPLE-NDA***

**For BATA's AUTOMATED TOLL COLLECTION AND ACCOUNTING SYSTEM**

This Nondisclosure Agreement ("Agreement") is entered into and effective as of ("Effective Date") by and between the Bay Area Toll Authority ("BATA") and. ("**Recipient**"), a corporation with a business address of \_\_\_\_\_.

**Recitals**

WHEREAS, BATA intends to disclose to Recipient certain information pertaining to BATA's Automated Toll Collection and Accounting System ("ATCAS") in order for Recipient to assist with the development and implementation of approved software changes for the *specify project*; and

WHEREAS, Recipient has agreed to receive such information under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Confidential Information. For the purpose of this Agreement, "Confidential Information" includes:
  - a) All information regarding the ATCAS software, including but not limited to, source code, source code documentation, writings, documents (electronic or hard copy), databases, drawings, and any record-bearing media containing or disclosing such information, which is disclosed by BATA to Recipient; and
  - b) All information disclosed in writing and marked as "Confidential" or with a similar notice.
2. Exclusions. Confidential Information does not include any information that:
  - a) Is publicly known at the time of disclosure or later becomes publicly known through no breach of this Agreement by Recipient, provided that Confidential Information shall not be deemed to be publicly known merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public;
  - b) Was, as between Recipient and BATA, lawfully in Recipient's possession prior to receipt from BATA without obligation of confidentiality; or
  - c) Is disclosed in response to a valid order of a court or other governmental body of the United States or any political subdivisions thereof, but only to the extent of and for the

purposes of such order, and only if the Recipient first notifies BATA of the order and permits BATA to seek an appropriate protective order.

3. Permitted Use. Recipient is permitted to use the Confidential Information for the purpose of developing and recommending software changes to the ATCAS software program and as authorized in its contracts with BATA and for no other reason, except as authorized in writing by BATA. Recipient may not make any copies of the Confidential Information without the express prior written permission of BATA.
4. Restrictions on Use and Maintenance of Confidentiality. Recipient may not disclose the Confidential Information to any third party, provided that Recipient may disclose Confidential Information to its employees or independent contractors on a “need-to-know” basis, each of whom has first signed an agreement with either party containing confidentiality provisions substantially similar to the terms and conditions of this Agreement. “Need-to-know” means that the employee requires the Confidential Information to perform his or her responsibilities in connection with the Permitted Use. Recipient will take all reasonable measures to protect the secrecy of the Confidential Information and will take at least those measures that Recipient takes to protect its own confidential information. These obligations survive the termination of this Agreement.
5. Return or Destruction of Confidential Information. Confidential Information, including permitted copies, shall remain the property of BATA. Within twenty (20) days of a written request by BATA, Recipient shall return all Confidential Information including all materials prepared containing Confidential Information, (or any designated portion thereof), and all copies thereof, to BATA or, if so directed by BATA, destroy such Confidential Information. Recipient also shall certify in writing that it has satisfied its obligations under this Paragraph within twenty (20) days of a written request by BATA.
6. No Obligations to Accept or Disclose; No License. Recipient shall have the right to refuse to accept any information under this Agreement and nothing herein shall obligate BATA to disclose to Recipient any particular information. It is understood that no patent, copyright, trademark or other proprietary right or license is granted by this Agreement. The disclosure of any Confidential Information and materials that may accompany the disclosure shall not result in any obligation to grant Recipient rights herein.
7. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS”. BATA MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE, ALL SUCH WARRANTIES ARE DISCLAIMED TO THE FULL EXTENT OF THE LAW, INCLUDING DISCLAIMER OF THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
8. Remedies. The parties agree that the conditions in this Agreement and the Confidential Information disclosed pursuant to this Agreement are of a special, unique and extraordinary character and that an impending or existing violation of any provision of this Agreement would cause BATA irreparable injury for which it would have no adequate remedy at law,

and agree that BATA shall be entitled to obtain immediately injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it at law or in equity

9. Term and Termination. The term of the Agreement shall begin upon the Effective Date and continue indefinitely, unless terminated by either party, with respect to further disclosures, upon thirty (30) days prior notice in writing. The rights and obligations accruing prior to termination as set forth herein shall, however, survive the termination unless otherwise agreed to by BATA in writing. Notwithstanding the above, the Agreement shall terminate automatically five (5) years after the last disclosure under this Agreement.
10. Miscellaneous. This Agreement represents the entire understanding and agreement of the parties and supersedes all prior communications, agreements and understandings relating to the subject matter hereof. The provisions of this Agreement may not be modified, amended, or waived, except by a written instrument duly executed by both parties. This Agreement may not be assigned by Recipient without the prior written consent of BATA. This Agreement is made subject to and shall be construed under the laws of the State of California, without regard to its conflicts of law principles. Each party warrants that it has the authority to enter into this Agreement for itself and its corporate affiliates.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date:

BAY AREA TOLL AUTHORITY

*Vendor.*

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Steve Heminger, Executive Director

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*Signature*